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24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF NEVADA**

26 GVCL VENTURES, INC., a corporation,

27 Plaintiff,

28 vs.

19 GOPETFRIENDLY.COM, LLC, a limited
20 liability company; DOES I-X inclusive; and
21 ROE CORPORATIONS XX-XXX, inclusive,

22 Defendants,

23 GOPETFRIENDLY.COM, LLC, a limited
liability company,

24 Counterclaim-plaintiff,

25 v.

26 GVCL VENTURES, INC., a Delaware
27 corporation; REGISTERED EXPRESS
28 CORPORATION, a Nevada corporation;
REGISTERED EXPRESS

Case Number: 2:16-cv-02892-JAD-MMM

**MOTION TO EXTEND TIME TO
SERVE FIRST AMENDED
COUNTERCLAIM AND TO PERMIT
SERVICE BY PUBLICATION**

(FIRST REQUEST)

1 INTERNATIONAL CORPORATION, a
 2 Nevada corporation; PROACTIVE PET
 3 PRODUCTS, INC., a Nevada corporation;
 4 DIGITAL AIRO, INC., a Nevada
 5 corporation; JOHN TAYLOR, an individual;
 6 MIKE DILLON, an individual; GERALD
 7 NEZIOL, an individual; DOES I-X, inclusive;
 8 and ROE CORPORATIONS I-X, inclusive,
 9
 10 Counterclaim-defendants.
 11
 12

13 Counterclaim-plaintiff GoPetFriendly.com, LLC (“GoPetFriendly”), by and through its
 14 counsel of record, Marquis Aurbach Coffing and the Law Offices of Philip A. Kantor, P.C.,
 15 hereby moves to extend the time in which to effectuate service of the First Amended
 16 Counterclaim under Federal Rule of Civil Procedure (“FRCP”) 4(m) by 60 days on
 17 counterclaim-defendants Gerald Neziol, Mike Dillon, and John Taylor, and to serve the First
 18 Amended Counterclaim on Mr. Taylor and Mr. Dillon by publication.

19 **I. GOOD CAUSE EXISTS TO EXTEND THE TIME FOR SERVICE BY 60 DAYS**

20 FRCP 4(m) requires a defendant to be served within 90 days after the complaint is filed.
 21 If “the plaintiff shows good cause for the failure [to serve a defendant within that time-frame],
 22 the court *must* extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m)
 23 (emphasis added).

24 In this case, GoPetFriendly filed its First Amended Counterclaim on July 21, 2017 [ECF
 25 No. 17], and therefore, the last day to effectuate service on Mr. Neziol, Mr. Dillon, and Mr.
 26 Taylor, is October 19, 2017. Although GoPetFriendly effectuated service on all of the entity
 27 counterclaim-defendants, it has been unable, despite diligence, to serve Mr. Dillon, Mr. Taylor,
 28 and Mr. Neziol within that time frame, as explained below.

Regarding Mr. Neziol, Mr. Gewerter, counsel of record for plaintiff and counterclaim-defendant GVCL Ventures, Inc. (“GVCL”), has represented that he will be representing Mr. Neziol in this case and has agreed to accept service for him.¹ Although Mr. Gewerter agreed that

¹ See Email exchange between H.Gewerter and C.Clement, attached hereto as **Exhibit A**; see also Declaration of Chad F. Clement in Support of Motion to Extend Time to Serve First Amended Counterclaim and to Permit Service by Publication (“Clement Decl.”), attached hereto as **Exhibit B**, ¶ 3.

1 he would waive a formal acceptance of service form and simply appear and respond to the First
 2 Amended Counterclaim on Mr. Neziol's behalf, he has not done so.² Thus, GoPetFriendly seeks
 3 a short extension to either have Mr. Gernerter appear and respond, or formally accept service.

4 Regarding Mr. Dillon and Mr. Taylor, both are former officers of the entity
 5 counterclaim-defendants, which include Nevada entities.³ The last known addresses for Mr.
 6 Dillon and Mr. Taylor are the addresses they listed with the Nevada Secretary of State and in
 7 GVCL's (its previous name was ProActive Pet Products, Inc.) public OTC Quarterly Report
 8 filing as of June 30, 2016.⁴ GoPetFriendly has attempted to serve Mr. Dillon and Mr. Taylor at
 9 all of those addresses, as well as the other addresses listed with the Nevada Secretary of State for
 10 counterclaim-defendant entities, but has been unsuccessful due to the fact that the addresses are
 11 either PO Boxes or the individuals (and companies) are no longer present at those addresses.⁵

12 As such, good cause exists to extend the time in which to effectuate service of the First
 13 Amended Counterclaim by 60 days on Mr. Neziol, Mr. Dillon, and Mr. Taylor, and in order to
 14 serve the First Amended Counterclaim on Mr. Taylor and Mr. Dillon by publication, as
 15 explained below.

16 **II. SERVICE BY PUBLICATION IS WARRANTED**

17 Pursuant to FRCP 4(e)(1), "an individual—other than a minor, an incompetent person, or
 18 a person whose waiver has been filed—may be served in a judicial district of the United States
 19 by: (1) following state law for serving a summons in an action brought in courts of general
 20 jurisdiction in the state where the district court is located or where service is made." Under
 21 Nevada Rule of Civil Procedure ("NRCP") 4(e)(1), "when the person on whom service is to be
 22 made resides out of the state, or has departed from the state, or cannot, after due diligence, be
 23 found within the state, or by concealment seeks to avoid the service of summons, and the fact

24 ² See *id.*; see also generally Docket, on file herein.

25 ³ Clement Decl., Ex. B at ¶¶ 4-5; see also **Exhibits C-G**.

26 ⁴ *Id.*

27 ⁵ See Affidavits of Attempted Service, attached hereto as **Exhibits H** and **I**; see also Summons
 28 Returned Unexecuted [ECF Nos. 38-41].

1 shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear,
 2 either by affidavit or by a verified complaint on file, that a cause of action exists against the
 3 defendant in respect to whom the service is to be made, and that the defendant is a necessary or
 4 proper party to the action, such court or judge may grant an order that the service be made by the
 5 publication of summons."

6 In this case, as explained above, after diligent effort, GoPetFriendly has been unable to
 7 serve Mr. Dillon and Mr. Taylor at the last known addresses for them, and has no other known
 8 addresses or contact information for them.⁶ Thus, pursuant to FRCP 4(e)(1) and NRCP 4(e)(1),
 9 serving Mr. Taylor and Mr. Dillon by publication is warranted.

10 **III. CONCLUSION**

11 For the forgoing reasons, the Court should extend the time in which to effectuate service
 12 of the First Amended Counterclaim under FRCP 4(m) by 60 days on Mr. Neziol, Mr. Taylor, and
 13 Mr. Dillon, and permit service of the Summons and First Amended Counterclaim on Mr. Taylor
 14 and Mr. Dillon by publication.

15 Dated this 19th day of October, 2017.

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26
 27
 28 ⁶ See Ex. ; Clement Decl., Ex. B at ¶¶ 6-7.